

AUG 25 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DOUG WAYNE SMITH,

Defendant - Appellant.

No. 05-50498

D.C. No. CR-04-01170-IEG

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, District Judge, Presiding

Submitted August 21, 2006**

Before: GOODWIN, REINHARDT, and BEA, Circuit Judges.

Doug Wayne Smith appeals from his bench-trial conviction for escape from confinement, in violation of 18 U.S.C. § 751(a). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Smith contends the district court erred by prohibiting him from collaterally attacking the validity of his prior conviction as a defense to the escape charge. We disagree.

A defendant may not use a challenge to the validity of a prior conviction as a defense to escape from confinement. *See Lucas v. United States*, 325 F.2d 867, 867 n.2 (9th Cir. 1963); *Bayless v. United States*, 141 F.2d 578, 579-80 (9th Cir. 1944).

AFFIRMED.